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To,

Dr. Sanjay Jaiswal
Member of Parliament and Chairperson
Joint Committee on the Biological Diversity (Amendment) Bill, 2021

Subject: Comments on the Biological Diversity (Amendment) Bill, 2021 to amend the Biological Diversity Act, 2002

Respected Chairperson,

This is to bring to your attention our comments on the Biological Diversity (Amendment) Bill, 2021 (hereafter referred to as the Amendments) tabled before the Rajya Sabha recently to amend the Biological Diversity Act, 2002 (hereafter referred to as the BDA).

Our organization, Wildlife Conservation Society-India (WCS-India) works towards the conservation of wildlife and wild places through science, conservation action, education, and inspiring people to value nature.

At the outset, we would like to congratulate the Ministry of Environment, Forest and Climate Change for the work that has gone into the Amendments, especially fulfilling the long standing demand from stakeholders to simplify, streamline and reduce compliance burden in order to encourage conducive environment for collaborative research and investments. Following aspects are especially of note:

- Amending the preamble to include Nagoya Protocol of 2010 furthers India's obligations to international treaties.
- **Section 4-** Transfer of research results in relation to codified traditional knowledge by Indians are exempted from application of this section and this does provide some relief to Indian researchers.
- **Definition of India** has been expanded to also include its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic

- Zone and other Maritime Zones Act, 1976, and the air space above its territory. This is very beneficial towards conservation of bio-resources and ecosystems found within India's maritime zones.
- **Under Section 7**, the Amendments also exempt cultivated medicinal plants and its products provided that a certificate of origin for cultivated medicinal plants is available with the manufacturer. Such certificates will help ensure that only cultivated varieties of medicinal plants are used in commercial utilization and not the wild varieties.
- Including representatives from departments dealing with Panchayati Raj and tribal affairs at the state level within the State Biodiversity Board is a step in the right direction.
- **Section 23** clarifies the powers of SBBs in granting or rejecting approvals, referred to in Section 7 and also determine the fair and equitable sharing of benefits while granting such approvals. This has laid to rest, long standing doubts on whether SBB has such powers over Indian entities accessing bio-resources or not.

Having stated the above, we would like to submit that the BDA is an iconic and important piece of legislation in India for biodiversity conservation till date. Hence we feel that there are aspects of the Amendments that need careful consideration. We have highlighted some of these below.

1. **General observations:** The Amendments have made the law more centralised and takes away from people's right to participation in biodiversity conservation. They also are not in accordance with the principle of Non-regression which requires that *"norms which have already been adopted by states should not be revised, if this implies going backward on the subject of standards of protection"*. This second point can especially be demonstrated in the next two comments on exemptions being made to multi-national companies and codified traditional knowledge.
2. **Exemption to multi-national companies with Indian subsidiaries:** Section 3 (2) entity has been changed to exclude multinational companies who may have subsidiaries registered in India with Indian management. While this may result in more foreign investment, it goes against the original intent of the legislation, which was to prevent unauthorised access of bio-resources by foreign entities for commercial utilization.
3. **Exemption to codified traditional knowledge:** Proviso to Section 7 already provided exemptions to local people and communities of the area, including growers and cultivators of biodiversity, vaid and hakims who have been practicing indigenous medicines. The 2021 amendments are now also exempting codified traditional knowledge, cultivated medicinal plants and its products and registered AYUSH practitioners. Such an exemption is going to benefit major manufacturers of herbal products, pharmaceuticals and nutraceuticals in India and will go against the Uttarakhand judgement of *Divya Pharmacy v. Union of India* wherein the Court held that Indian manufacturers have an inherent responsibility towards the custodians of bio-resources. However, original intent of this exemption was to provide relief to bona fide users and custodians of bio-resources and not major companies.

4. **Removal of provision for issuing public notice:** Under Section 19, there was a clause 4 which mandated the NBA to give public notice of every approval granted by it. The objective of issuing notice is to invite objections or replies from public/ benefit claimers, if any, for such approvals. However, the language in the amendment is that the NBA “shall place in public domain details of every approval granted or rejected.” This may result in taking away the right of the public to object any approvals or rejections. The same change has been made to Section 20 as well which is to do with transfer of biological resource or knowledge.
5. **Benefit claimers and local bodies no longer a part of negotiations:** Section 21 amendments have removed the need for negotiations between the person applying for approvals, local bodies and benefit claimers while deciding on fair and equitable benefit sharing. Instead, the negotiations will be directly between the applicant and NBA. This goes against the Nagoya Protocol which mandates prior informed consent and mutually agreed terms. The benefit claimer or local body represented by the BMC get no say in these negotiations.
6. **Dis-empowering the BMCs:** Their powers have not been enhanced, and the proposed amendments also allow for state biodiversity boards to represent BMCs to determine terms of benefit sharing. Many states have constituted BMCs but the bodies don't really have any power because they haven't been allotted funds. So, the role they can play remains negligible. Their role, especially when it comes to high conservation/economic value bio-resources has been ignored. Section 41 (3) empowers BMCs to levy charges for access to bio-resources but there is no clarity, on how this can be operationalized and often gets confused with ABS fees amongst those accessing the resources. More clarity could have been provided.
7. **Decriminalization of biodiversity offences:** As per Section 58 of the BDA, these offenses were cognizable and non-bailable. In the Amendments, Section 58 is removed stripping the States of the power to punish the offenders. The State Biodiversity Board can only slap Rs 1-5 lakh fine on the erring companies and in case of non-payment of fine or continuation of violation, an additional penalty may be imposed, not exceeding `1 crore. However, such a penalty will be decided by the adjudicating officer appointed by the Central government.

In recent years the threat posed by the illegal online trade in endangered animals has received increasing attention but the illegal trade in endangered plants remains under-investigated. Yet a growing body of research indicates that the rise of the internet has also greatly expanded the possibilities for plant trafficking. If the offence of illegal access becomes decriminalized, several species of endangered plants and animals especially insects not protected under the Wildlife Protection Act, will be at risk. There have already been some instances of illegal access of such insects from Indian forests by foreign researchers. The offenders were penalized and imprisoned under the BDA. This attempt to decriminalize will change all that. Instead of decriminalizing, it would have been preferable to have improve the procedure under which authorized officers can charge offenders under the law. This is another missed opportunity.

8. Lack of public consultation: The Biological Diversity Amendment Bill 2021 has been introduced without seeking public comments as required under the pre-legislative consultative policy of 2014.

9. Missed opportunities

- a. **Definition of traditional knowledge:** The law suffered from a lack of definition of what comprises traditional knowledge and instead it has complicated its meaning by including terms like ‘associated knowledge’, ‘contemporary knowledge’ and ‘codified traditional knowledge’.
- b. **Definition of value added products:** There is a general lack of understanding as to what the current definition entails and for manufacturers of products using bio-resources, it will be very helpful to clarify this definition further. The scientific advancement of technology has made it impossible to keep the ingredients of any product inseparable.
- c. **Regulations or Guidelines?:** Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014 were issued under BDA. The usage of the terms ‘guidelines’ as well as ‘regulations’ in the title provides a confusing mandate, given that this document falls in the category of a legal instrument and needs to be strong. Calling the points guidelines instead of regulations reduces its potential. Section 23 in the Amendments still refers to ‘guidelines or regulations’. This could have been clarified.
- d. **Peoples Biodiversity Registers:** PBRs at the moment mentioned only in the Biological Diversity Rules, 2004. In light of addition of ‘codified TK’, what happens to these registers, once documentation has been concluded, is still not clear. At latest count, 2,65,458 PBRs have been created in the country. Given the importance of these registers, their legal positioning should have been made more secure through these amendments.
- e. **Conservation potential of BDA ignored:** Section 36 empowers the Central government to undertake measures for biodiversity impact assessment, in case of a project that threatens to impact biodiversity in the project area, or to take measures before use and release of living modified organisms. However, there are no guidelines on how this could be implemented.

We hope that the above-mentioned concerns and recommendations will be considered during the committee’s deliberations. Thank you for your consideration.

Yours sincerely,
Wildlife Conservation Society-India